RECORD AND BRIEFS

FILED
SEP 25 2017
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 16-980

IN THE

Supreme Court of the United States

JON HUSTED, OHIO SECRETARY OF STATE,

Petitioner,

v.

A. PHILIP RANDOLPH INSTITUTE, NORTHEAST OHIO COALITION FOR THE HOMELESS, AND LARRY HARMON,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF THE LEAGUE OF WOMEN VOTERS OF THE UNITED STATES, LEAGUE OF WOMEN VOTERS OF OHIO, AND THE BRENNAN CENTER FOR JUSTICE AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

WENDY R. WEISER
MYRNA PÉREZ
JONATHAN BRATER
BRENNAN CENTER FOR JUSTICE
161 Avenue of the Americas, 12th Floor
New York, NY 10013
(646) 292-8318
wendy.weiser@nyu.edu

JOHN A. FREEDMAN
Counsel of Record
PETER J. SCHILDKRAUT
ELISABETH S. THEODORE
JEREMY KARPATKIN
ANDREW W. BEYER
ARNOLD & PORTER KAYE SCHOLER LLP
601 Mass. Ave., NW
Washington, DC 20001
(202) 942-5000
john.freedman@apks.com

Counsel for Amici Curiae

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTEREST OF *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 3

ARGUMENT 4

I. Section 8 of the NVRA Was Intended to Prevent Purges Based on Unreasonable Inferences. 4

II. Ohio's Supplemental Process Is an Entirely Unreasonable Method of Determining Ineligibility 15

A. Failure to Vote in One Federal Election Cycle Is Not a Reasonable Proxy for Voter Ineligibility. 16

B. No Other State Uses Practices as Unreasonable as Ohio's to Deregister Voters. 20

CONCLUSION 26

APPENDIX 1a

TABLE OF AUTHORITIES

Page(s)

Cases

FDA v. Brown & Williamson Tobacco Corp.,
529 U.S. 120 (2000) 14

King v. Burwell,
135 S. Ct. 2480 (2015) 14

Reves v. Ernst & Young,
494 U.S. 56 (1990) 14

Statutes and Codes

52 U.S.C. § 20501(a)(2) 20

52 U.S.C. § 20501(a)(3) 4

52 U.S.C. § 20503(b) 21

52 U.S.C. § 20507(a)(3)(A), (ii) 12

52 U.S.C. § 20507(a)(3)(B), (iii) 12

52 U.S.C. § 20507(a)(3)(C) 15

52 U.S.C. § 20507(a)(3)(C), (4) 13

52 U.S.C. § 20507(a)(4) 15

52 U.S.C. § 20507(a)(4)(A) 12

52 U.S.C. § 20507(a)(4)(B) 12

52 U.S.C. § 20507(b)(1) 14

TABLE OF AUTHORITIES—continued

Page(s)

52 U.S.C. § 20507(b)(2) 13, 20

52 U.S.C. § 20507(c)(1) 12

52 U.S.C. § 20507(c)(1)(B)(i) 14

52 U.S.C. § 20507(c)(1)(B)(ii) 13

52 U.S.C. § 20507(d)(1)(A) 13

52 U.S.C. § 20507(d)(2) 13, 14, 18

52 U.S.C. § 20507(e)(1)-(2) 10

Ala. Code 1975 § 17-4-30(a) 22

Alaska Stat. § 15.07.130(a) 24

Ariz. Rev. Stat. § 16-166(A) 22

Ariz. Rev. Stat. § 16-166(E) 23

Cal. Elec. Code § 2225 ..... 22, 23

Colo. Rev. Stat. § 1-2-605 (1) 22

Conn. Gen. Stat. § 9-32 23

Del. Code tit. 15, § 1704 23

Del. Code tit. 15, § 1704(a) 22

Fla. Stat. § 98.065(2) 24

TABLE OF AUTHORITIES—continued

Page(s)

Ga. Code § 21-2-234(a) 24

Ind. Code § 3-7-38.2-2 ..... 21, 22, 23

Kan. Stat. § 25-2316c(e) 22, 23

29-250-505 Me. Code R. § 1 24

Mass. Gen. Laws Ch. 51, § 37 23

Md. Code Elec. Law § 3-502(b) 23

Mich. Comp. Laws § 168.509aa 23

Mont. Code § 13-2-220(1) 24

N.J. Stat. § 19:31-15 23

N.M. Stat. 1-4-28 23

N.Y. Elec. Law § 5-712 21

Neb. Rev. Stat. § 32-329 ..... 22, 23

Ohio Rev. Code § 3503.21(B)(1) 23

Okla. Stat. tit. 26, § 4-120.2 24

25 Pa. Cons. Stat. § 1901(b)(3) 24

17 R.I. Gen. Laws § 17-9.1-27(b) 24

S.D. Codified Laws § 12-4-19 24

TABLE OF AUTHORITIES—continued

Page(s)

Va. Code § 24.2-404.4 22

Va. Code § 24.2-428 23

W.V. Code § 3-2-25(j) 25

Wash. Rev. Code § 29A.08.620 21

Other Authorities

139 Cong. Rec. S2,390 (1993) 8

Electronic Registration Information Center (ERIC), http://www.ericstates.org/faq 21

Equal Access to Voting Act of 1989: Hearing Before the Subcomm. on the Constitution of the S. Comm. on the Judiciary, 101st Cong. 89 (1989) 8

Equal Justice to Voting Act of 1989: Hearing Before the Subcomm. on the Constitution of the S. Comm. on the Judiciary, 101st Cong. 82 (1989) 6

H.R. Rep. No. 103-9 (1993) 4, 5

Ohio Sec'y of State, *2012 Elections Results*, https://www.sos.state.oh.us/elections/election-results-and-data/2012-elections-results 16, 17

TABLE OF AUTHORITIES—continued

Page(s)

Ohio Sec'y of State, *2014 Elections Results*, https://www.sos.state.oh.us/elections/election-results-and-data/2014-elections-results; 16, 17

Ohio Sec'y of State, *2016 Official Elections Results*, https://www.sos.state.oh.us/elections/election-results-and-data/2016-official-elections-results 16, 17

Ohio Sec'y of State, *Voter Turnout: November 2, 2010*, https://www.sos.state.oh.us/elections/election-results-and-data/2010-elections-results/voter-turnout-november-2-2010..... 16

Presidential Comm'n on Election Admin., *The American Voting Experience* 48 (2014)..... 19

S. Rep. No. 101-140 (1989)..... 6

S. Rep. No. 103-6 (1993)..... 4, 5, 7, 9

U.S. Census Bureau, Geographical Mobility: 2015 to 2016 (2016), https://www.census.gov/data/tables/2016/demo/geographic-mobility/cps-2016.html 10

TABLE OF AUTHORITIES—continued

Page(s)

U.S. Census Bureau, Voting and Registration in the Election of November 2014 (2015), https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-577.html 10

U.S. Census Bureau, Voting and Registration in the Election of November 2016 (2016), https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-580.html 11

U.S. Election Assistance Comm'n, The 2014 EAC Election Administration and Voting Survey Comprehensive Report, (2015), https://www.eac.gov/assets/1/1/2014_EAC_EAVS_Comprehensive_Report_508_Compliant.pdf 9

U.S. Election Assistance Comm'n, The 2016 Election Administration and Voting Survey Comprehensive Report (2017), https://www.eac.gov/assets/1/6/2016_EAVS_Comprehensive_ Report.pdf 9

U.S. Gov't Accountability Off., GAO-14-850, Elections: Observations on Wait Times for Voters on Election Day 2012 (2014) 19

TABLE OF AUTHORITIES—continued

Page(s)

Voter Registration: Hearing Before the Subcomm. on Elections of the Comm. on H. Admin., 101st Cong. 134 (1989) 6

Voter Registration: Hearing Before the Subcomm. on Elections of the Comm. on H. Admin., 101st Cong. 149 (1989) 1, 5, 6, 7, 8

Voter Registration: Hearing Before the Subcomm. on Elections of the Comm. on H. Admin., 101st Cong. 201 (1989) 9

Voter Registration: Hearing Before the Subcomm. on Elections of the Comm. on H. Admin., 101st Cong. 206-07 (1989) 18

Voter Registration: Hearing Before the Subcomm. on Elections of the Comm. on H. Admin., 103d Cong. 106 (1993) 7

Voter Registration: Hearing Before the Subcomm. on Elections of the Comm. on H. Admin., 103d Cong. 140 (1993) 1

INTEREST OF *AMICI CURIAE*

The League of Women Voters of the United States ("League") is a nonpartisan, community-based organization that encourages Americans to participate actively in government and the electoral process. Founded in 1920 as an outgrowth of the struggle to win voting rights for women, the League now has more than 140,000 members and supporters, and is organized in approximately 750 communities and in every state. For over ninety years, the League has led efforts to remove barriers that Americans face in registering to vote and casting a ballot.[1]

The League was deeply involved in crafting the National Voter Registration Act of 1993 ("NVRA"), having provided substantial testimony and input over the course of the NVRA's legislative history, specifically on the topic of purges for failure to vote. *See, e.g., Voter Registration: Hearing Before the Subcomm. on Elections of the Comm. on H. Admin.*, 101st Cong. 149 (1989) (testimony of Nancy M. Neuman, President, League of Women Voters); *Voter Registration: Hearing Before the Subcomm. on Elections of the Comm. on H. Admin.*, 103d Cong. 140 (1993) (testimony of Becky Cain, President, League of Women Voters).

---

[1] No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No one other than *amici curiae*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief. All parties have filed blanket consents to the filing of amicus briefs.

The League of Women Voters of Ohio ("LWVO") is the state affiliate of the League. It is a nonpartisan political organization, which encourages informed and active participation in government. There are thirty-three local Leagues around the state. The LWVO has fought unlawful voter restrictions and believes that voting is a fundamental citizen right that must be guaranteed. The LWVO's local Leagues register voters, perform public education, conduct research, and engage with public officials on issues related to registration and voting.

The Brennan Center for Justice at N.Y.U. School of Law is a not-for-profit, non-partisan think tank and public interest law institute that seeks to improve systems of democracy and justice. It was founded in 1995 to honor the extraordinary contributions of Justice William J. Brennan, Jr. to American law and society. Through its Democracy Program, the Brennan Center seeks to bring the idea of representative self-government closer to reality, including through work to protect the right to vote and to prevent manipulation of electoral rules. The Brennan Center conducts empirical, qualitative, historic, and legal research on electoral practices, including on voter list maintenance practices. In 2008, the Center published a comprehensive report examining the voter roll purge practices in the United States based on in-depth interviews of state and local election administrators. Moreover, the Center has litigated numerous cases involving purges of the voter rolls, and submitted numerous amicus briefs in this Court on voting rights matters.

SUMMARY OF ARGUMENT

The purge provisions contained in Section 8 of the NVRA are designed to prevent states from instituting practices to remove registered voters from the rolls based on unreasonable inferences that the voter has become ineligible. The NVRA requires states to make "a reasonable effort to remove the names of ineligible voters," and bars states from taking unreasonable steps to remove voters from the rolls, such as removing individuals for non-voting or removing voters based on an unsubstantiated belief that the voter has moved. The legislative history and the NVRA's text confirms Congress sought to protect voters against having to needlessly re-register because of purges based on unreasonable inferences. *See* Part I.

Ohio's Supplemental Process of commencing a purge based on the failure to vote in a single federal election cycle is not reasonable. It is wildly overbroad and does not target individuals who may no longer be eligible. In this case, Ohio began the first step in purging over half its registered voters—by sending notices to some four million people—after they failed to vote in a single federal election cycle in 2010. Ohio compounded the unreasonableness of its action by not clearly informing these voters that they would be removed from the voter rolls if they did not act in response to the notice. And Ohio stands alone: it is one of only six states that expressly commences deregistration based on the failure to vote. Yet Ohio is the *only* state that commences such a process based on the failure to vote in a single federal election cycle. Section 8 of the NVRA was designed to prevent such practices.

ARGUMENT

I. Section 8 of the NVRA Was Intended to Prevent Purges Based on Unreasonable Inferences.

1. When Congress enacted the NVRA, it did so against a historical backdrop in which states routinely imposed obstacles to voter registration to limit the franchise. Such "[r]estrictive registration laws and administrative procedures were introduced in the United States . . . to keep certain groups of citizens from voting; in the North, the wave of immigrants pouring into the industrial cities; in the South, blacks and the rural poor." H.R. Rep. No. 103-9, at 2 (1993). Indeed, "[t]hroughout the history of this country there have been attempts to keep certain groups of citizens from registering to vote—which groups specifically depending on the decade and the locale." S. Rep. No. 103-6, at 3 (1993). Congress rightly condemned "discriminatory and unfair registration laws and procedures" that had "a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities." 52 U.S.C. § 20501(a)(3).

Among the obstacles Congress addressed in the NVRA were efforts to deregister or "purge" voters who remained eligible to vote. Congress's reforms of purge practices are found in Section 8 of the NVRA. An animating goal of Section 8 was to prevent deregistration procedures premised on unreasonable inferences that a registered voter was no longer eligible to vote. The Senate Committee on Rules and Administration explained that Section 8 was intended to "ensure that once a citizen is registered to vote,

he or she should remain on the voting list so long as he or she remains eligible to vote in that jurisdiction." S. Rep. No. 103-6, at 17 (1993). The committee further noted: "The maintenance of accurate and up-to-date voter registration lists is the hallmark of a national system seeking to prevent voter fraud. These processes, however, must be scrutinized to prevent poor and illiterate voters from being caught in a purge system which will require them to needlessly reregister." *Id.* at 18.

Congress heard about these problems over the course of successive legislative sessions.[2] In fact, the congressional record is replete with complaints about abusive practices where persons still eligible to vote were removed from the rolls. The record established both that certain purges had been conducted in a discriminatory manner, and that other purges arbitrarily purged individuals based on an unreasonable inference that the individual was no longer eligible to vote. Among the injustices documented for Congress were "selective" purges, insufficient or no notice to registrants about their removal, purges too close to an election for citizens to refresh or renew their registrations in time to vote, and other disenfranchisement measures. *See generally* S. Rep. No. 103-6, at 3 (1993) (identifying specific practices that inhibited or excluded potential voters); *Voter Registration: Hearing Before the Subcomm. on Elections of the*

---

[2] The legislative hearings and debate concerning the NVRA were conducted during the 100th, 101st, 102nd, and 103rd Congresses. *See* H.R. Rep. No. 103-9, at 4-5 (1993). Following its passage during the 102nd Congress, the legislation was vetoed. Thereafter, the legislation passed and was signed into law during the 103rd Congress.

Comm. On H. Admin., 101st Cong. 149 (1989) (testimony on purged voters having insufficient time to reregister to vote); *id.* at 134 (same); *id.* at 202-03 (testimony regarding absence of notice to purged voters).

Prominent among the practices condemned during the congressional testimony was the practice of purging registered voters who had not voted in the most recent election.[3] As the Committee on Rules and Administration report summarizes:

> If there was a single point of agreement among all participants in the hearings on voter registration, it was the fact that not only is voting a right, but also, in this country, everyone has an equal right to choose not to vote. However, many States continue to penalize such non-voters by removing their names from the voter registration rolls merely because they have failed to cast a ballot in a recent election.

---

[3] *See, e.g., Voter Registration: Hearing Before the Subcomm. on Elections of the Comm. on H. Admin.*, 101st Cong. 149, 201 (1989) (discussing New York City purges resulting in 350,000 individuals being dropped from rolls before the 1988 Presidential Primary and over 300,000 purge notices were prepared just prior to the 1989 mayoral primary); *Equal Justice to Voting Act of 1989: Hearing Before the Subcomm. on the Constitution of the S. Comm. on the Judiciary*, 101st Cong. 82 (1989) (discussing 1988 Atlanta purge of 25,000 voters for not voting in recent elections prior to Presidential primary); *Voter Registration: Hearing Before the Subcomm. on Elections of the Comm. on H. Admin.*, 101st Cong. 134 (1989) (discussing 1989 Chicago purge of individuals who had not voted in recent elections prior to mayoral election).

S. Rep. No. 101-140, at 12 (1989).[4]

During congressional hearings, witnesses not only condemned the arbitrary and discriminatory effects of purging non-voters, they also challenged the basic premise behind conducting such purges—that is, the inference that a person's failure to vote signifies that he or she has moved or is otherwise ineligible to vote. As the Senate Rules Committee observed: "[W]hile voting is a right, people have an equal right not to vote, for whatever reason." S. Rep. No. 103-6, at 17 (1993). Removals of non-voters, the Committee concluded, are overinclusive. "Such citizens may not have moved or died or committed a felony." *Id.*

Throughout the Congressional hearings and debate, witnesses and members of Congress explained why the failure to vote does not a support an inference that a voter is ineligible. For example, in 1989, League President Nancy M. Neuman testified at some length about the many reasons why voters do

---

[4] *See also Voter Registration: Hearing Before the Subcomm. on Elections of the Comm. on H. Admin.*, 101st Cong. at 149 (testimony of Nancy M. Neuman, President, League of Women Voters); *id.* at 135 (testimony of Jesse Jackson, President, National Rainbow Coalition); *id.* at 154 (testimony of Pamela Monroe Young, Legal Dir., NAACP); *id.* at 254 (testimony of Frank R. Parker, Dir., Voting Rights Project, Lawyers' Committee for Civil Rights Under Law); *Voter Registration: Hearing Before the Subcomm. on Elections of the Comm. on H. Admin.*, 103d Cong. 106 (1993) (testimony of Emmett H. Fremaux, Jr., Exec. Dir., Washington DC, Board of Elections and Ethics); *id.* at 109 (statement of Edward A. Hailes, Counsel, Washington Bureau, NAACP).

not vote in particular elections—none of which support the conclusion that voter is ineligible:

> Whatever may be a voter's reasons for choosing not to vote—lack of interest in or confusion about a particular election, disbelief that the issues presented will adequately express one's concerns or that the candidates are worthy of one's support, inaccessibility of the polling place, absence, emergency, health, even general lack of interest—one should not have the right to vote stripped away.

Voter Registration: Hearing Before the Subcomm. on Elections of the Comm. on H. Admin., 101st Cong. 149 (1989) (statement of Nancy M. Neuman, President, League of Women Voters).

Senator Wendell Ford, the Senate sponsor of the NVRA, argued that "[w]e can put an end to unnecessary reregistration by voters who choose to be heard by not voting. . . . Some, even Senators, abstain from voting . . . . And that speaks as loud as a yea or a nay. So they want to be heard by choosing not to vote. And then we penalize them under our present system for not voting." 139 Cong. Rec. S2,390 (1993) (statement of Sen. Ford). Similarly, Senator Kennedy, a co-sponsor of the legislation, observed that "[m]any people who are registered don't vote as a matter of civil protest." *Equal Access to Voting Act of 1989: Hearing Before the Subcomm. on the Constitution of the S. Comm. on the Judiciary*, 101st Cong. 89 (1989).

Deborah Karpatkin, Legal Director of Human SERVE, likewise pointed out that voters may abstain from voting in one or more elections

> because they don't wish to vote for any of the candidates available to them. The only way these voters can express their displeasure with the candidates is to vote with their feet—that is, to not show up. I don't know of any ballots in the country where you can check "None of the above."

Voter Registration: Hearing Before the Subcomm. on Elections of the Comm. on H. Admin., 101st Cong. 201 (1989) (testimony of Deborah Karpatkin, Legal Dir., Human Serve); *see also* S. Rep. No. 103-6, at 17 (1993) ("No other rights guaranteed to citizens are bound by the constant exercise of that right. We do not lose our right to free speech because we do not speak out on every issue.").

These observations and the resulting legislative judgment make good sense. In every election, there are *tens of millions* of registered voters who do not vote. For example, in 2016, the U.S. Election Assistance Commission counted almost 74 million registered voters across the country (37.02%) who did not cast a ballot in the general election.[5] Voter participation is even lower in non-Presidential elections: in 2014, almost 110 million registered voters across the country (57.45%) did not cast a ballot in the general election.[6] While different data from the U.S.

---

[5] *See* U.S. Election Assistance Comm'n, The 2016 Election Administration and Voting Survey Comprehensive Report 21 (participating voters) (2017), https://www.eac.gov/assets/1/6/2016_EAVS_Comprehensive_Report.pdf.

[6] *See* U.S. Election Assistance Comm'n, The 2014 EAC Election Administration and Voting Survey Comprehensive Report 11 (participating voters), 18 (registered voters) (2015), https://www.eac.gov/assets

Census Bureau show a smaller number of registered non-voters in 2014—roughly 50 million—that number is still vast.[7]

These numbers far exceed the number of registered voters who move outside their county each election cycle, and thus become ineligible to vote in that district. *See* 52 U.S.C. § 20507(e)(1)-(2). According to the U.S. Census Bureau, about ten million residents age 18 or older moved outside their county between 2015 and 2016. *See* U.S. Census Bureau, Geographical Mobility: 2015 to 2016 tbl.1 (2016), https://www.census.gov/data/tables/2016/demo/geographic-mobility/cps-2016.html.[8] That means that even if one assumes that every single adult mover failed to take any steps to update their registration information, moving still would account for less than one-seventh of the non-voting activity in 2016, based on figures from the U.S. Election Assistance Commission.

Survey data of registered voters who do not vote confirms that there are many reasons why an eligible voter might abstain from voting—none of which implicates ineligibility. For example, a U.S. Census Bureau survey of 18,933 registered voters who did

---

/1/1/2014_EAC_EAVS_Comprehensive_Report_508_Compliant.pdf.

[7] U.S. Census Bureau, Voting and Registration in the Election of November 2014 tbl. 4a (2015) (Total voted and Total registered), https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-577.html.

[8] Census data indicate that between 2015 and 2016, about 26 million residents over the age of 18 moved. *See* U.S. Census Bureau, Geographical Mobility: 2015 to 2016 tbl.1 (2016), https://www.census.gov/data/tables/2016/demo/geographic-mobility/cps-2016.html.

not vote in the 2016 election found that most of these individuals did not vote because they:

- "did not like candidates or campaign issues" (24.8%);
- were "not interested" (15.4%);
- were "too busy" or had "conflicting schedule" (14.3%);
- had "illness or disability" (11.7%);
- were "out of town" (7.9%);
- "forgot to vote" (3.0%);
- had "transportation problems" (2.6%); or
- had an "inconvenient polling place" (2.1%).[9]

Only 4.4 percent of respondents claimed that they did not vote because of "registration problems." Even if, in the unlikely event, every single one of these respondents experienced such problems because they moved, that accounts for at most 4.4 percent of those who do not vote.

These data demonstrate that it is unreasonable to infer that a person did not vote *because* he or she has moved or is otherwise no longer eligible to vote.

2. Congress addressed this issue in Section 8 of the NVRA, which provides the basic rules for conducting purges. Section 8 directs states to make

---

[9] U.S. Census Bureau, Voting and Registration in the Election of November 2016 tbl.10 (2016), https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-580.html. An additional 11.1% provided another reason, and 2.7% responded that they did not know or refused to answer.

"reasonable efforts" to maintain accurate rolls of voters. Preventing eligible registrants from being purged arbitrarily is an essential aspect of reasonableness.

The NVRA specifies only five reasons for which voters may be removed from the rolls: (i) the voter requests to be removed, 52 U.S.C. § 20507(a)(3)(A), (ii) the voter is ineligible under state law due to criminal conviction, *id.* § 20507(a)(3)(B), (iii) the voter is ineligible under state law due to mental incapacity, *id.*, (iv) the voter has died, *id.* § 20507(a)(4)(A), or (v) the voter has moved out of the jurisdiction, *id.* § 20507(a)(4)(B).

The first four factors—voter request, criminal conviction, adjudication of mental incapacity, and death—are derived from ascertainable, recorded facts. Accordingly, purges on those bases are relatively straightforward. In contrast, assessing whether a voter has moved but has not so informed election officials is often very difficult. Because of this, the NVRA contains additional restrictions specifically aimed at purges based on an assumed change in residence. The statute expressly recognizes only three permissible processes for purging voters on the ground that they have moved.

First, the NVRA allows states to begin the deregistration process when the Postal Service provides information that the voter has moved. *Id.* § 20507(c)(1). If the Postal Service has information that an individual has moved, it is reasonable for a state to infer that the individual may have, in fact, moved. Yet, Congress still insisted that the state verify the move through the Section 8(d)(2) procedure. *Id.* § 20507(c)(1)(B)(ii).

Second, the NVRA allows a state to remove a voter from the rolls if the voter confirms in writing that the voter has moved. *Id.* § 20507(d)(1)(A). If an individual confirms that she or he has moved, it is of course reasonable for the state to act on that information.

Third, after receiving or obtaining credible information that a voter has moved,[10] the NVRA allows a state to send a forwardable notice to the voter with a prepaid return card requiring the voter to confirm her residence, *i.e.*, the Section 8(d)(2) notice. If the voter does not return the card and does not vote in the next two federal elections, it is not unreasonable for the state to infer that the voter has moved. *Id.* § 20507(d)(2).

But even when states follow these steps, the NVRA still limits states' discretion on how to implement a removal program in a number of ways:

First and foremost is the limitation at issue in this case: the statute explicitly prohibits states from purging registered voters "by reason of the person's failure to vote . . . ." *Id.* § 20507(b)(2). This provision is not an isolated limitation; it is part of a series of limitations on how states can remove from the rolls individuals suspected of moving.

The statute further requires that purges based on moving (among other grounds) occur only pursuant to a "general program" involving "reasonable effort[s]." *Id.* § 20507(a)(3)(C), (4). And, more generally, the statute bars any purges that are not

---

[10] As discussed *infra* Part II.B, there are a number of ways for states to secure credible information that a voter has moved.

"uniform" and "nondiscriminatory." *Id.* U.S.C. § 20507(b)(1).

Congress did not stop there. The NVRA also provides additional, more specific limits on state programs to purge registered voters:

- If a voter has moved to a different address in the same jurisdiction but did not update her address, the voter is nonetheless entitled to vote. *Id.* § 20507(c)(1)(B)(i).
- If a voter is mailed a forwardable notice with the prepaid return card and the voter does not return the card but appears to vote at any time before the next two elections, the voter may not be purged. *Id.* § 20507(d)(2).

These prohibitions are directed at the accuracy of inferences about ineligibility, including in particular whether a failure to vote in a single federal election cycle signifies that the voter has become ineligible. For the present case, this is significant for two reasons.

First, the "failure to vote" prohibition is part of a related series of protections against purging individuals based on unreasonable inferences that they may have moved. That provision should be interpreted in a manner consistent with that objective, and not in a way that defeats it. *Cf. King v. Burwell*, 135 S. Ct. 2480, 2493 (2015) ("We cannot interpret federal statutes to negate their own stated purposes.") (internal quotation marks omitted); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000); *Reves v. Ernst & Young*, 494 U.S. 56, 60-61 (1990).

Second, Congress was so deeply concerned about inaccurate purging, especially when seeking to

remove a voter because she has moved, that it erected multiple safeguards to curb that practice. The prohibition on purging by reason of non-voting is a critical safeguard against inaccurate purges of individuals suspected of moving; indeed, it lies at the center of Congress's intended protections for the right to vote or not vote.

While the NVRA does not expressly address every practice a state might use to determine whether a voter becomes ineligible, and allows states some flexibility, the NVRA directs states to "conduct a general program that makes a *reasonable* effort to remove the names of ineligible voters." 52 U.S.C. § 20507(a)(4) (emphasis added). And it bars states from removing voters from the rolls based on change in residence unless removal is part of that general, reasonable program. *Id.* § 20507(a)(3)(C) (barring change-in-residence removals except pursuant to 52 U.S.C. § 20507(a)(4)). For the reasons described below in Part II, a program like Ohio's Supplemental Process, which is initiated when a voter fails to vote in just one election, does not pass Congress's test.

II. Ohio's Supplemental Process Is an Entirely Unreasonable Method of Determining Ineligibility.

Ohio's Supplemental Process is not a reasonable measure to maintain accurate voting rolls by identifying and removing ineligible voters. As Congress recognized in the NVRA, failure to vote in a single election is a lousy proxy for assessing whether a registered voter has moved or otherwise become ineligible to vote. That is why the overwhelming majority of states expressly do not rely on failure to

vote at all. There are four outlier states, but none is as aggressive as Ohio.

Only Ohio deregisters voters based on their failure to vote in a *single* federal election cycle. As a result, the purges that are at issue in this litigation were commenced following a non-Presidential election (in 2010) in which half of Ohio registered voters—some four million people—did not vote. Such a process cannot be considered reasonable within the meaning of the NVRA.

A. Failure to Vote in One Federal Election Cycle Is Not a Reasonable Proxy for Voter Ineligibility.

1. Ohio's Supplemental Process starts from an unjustified premise. It is unreasonable to infer that a person may have moved (or died or been disenfranchised) simply because the registrant failed to vote in a single federal election cycle.

The number of affected voters is startling. For example, during the Presidential election in 2016, 28.67% of Ohio registered voters did not vote, and in 2012, 29.46% did not vote.[11] As with the national trends, non-voting is even higher in non-Presidential elections: in 2014, 59.35% of Ohio registered voters did not cast a ballot, and in 2010, 50.78% did not vote.[12] Those percentages translate into millions of

---

[11] Ohio Sec'y of State, *2016 Official Elections Results*, https://www.sos.state.oh.us/elections/election-results-and-data/2016-official-elections-results; Ohio Sec'y of State, *2012 Elections Results*, https://www.sos.state.oh.us/elections/election-results-and-data/2012-elections-results.

[12] Ohio Sec'y of State, *2014 Elections Results*, https://www.sos.state.oh.us/elections/election-results-and-data/2014-elections-results; Ohio Sec'y of State, *Voter Turnout:*

eligible voters that choose to stay home on election day in Ohio: over 2.2 million in 2016, and over 2.3 million in 2012.[13] In non-presidential election years, the numbers double. In 2014, 4.6 million registered Ohioans did not vote, and 4.1 million did not vote in 2010.[14] While Ohio speculates that those numbers might be inflated by including non-eligible voters, it offers no data to substantiate that assumption. In any event, commencing a purge of all such individuals—as Ohio did here—is not reasonable.

2. Ohio compounded the unreasonableness of its program by sending ineffectual notices under Section 8(d)(2) that failed to warn voters to take a specific action or face removal from the rolls. Petitioner's argument that its notice prevents any violation of the NVRA because its purges are based on a "failure to respond to a notice," and not the failure to vote, *see* Pet. Br. 23-29, ignores that its own practice failed to make clear that voters needed to respond. The court below found that Ohio's 8(d)(2) notices "did not adequately inform voters of the consequences of failing to respond to the notice; rather, the form indicated that the recipient's registration 'may' be canceled if he or she did not respond, re-register, or vote in the next four years." Pet. App. 6a. Notably, Petitioner does not dispute this finding. *Id.* at 8a-9a. Ohio's inadequate 8(d)(2) notices cannot transform its unreasonable practice of initiating purges based

---

November 2, 2010, https://www.sos.state.oh.us/elections/election-results-and-data/2010-elections-results/voter-turnout-november-2-2010.

[13] *2016 Official Elections Results*, *supra* note 11; *2012 Elections Results*, *supra* note 11.

[14] *2014 Elections Results*, *supra* note 12; *Voter Turnout*, *supra* note 12.

on the failure to vote in a single federal election cycle into a reasonable one.[15]

3. The Supplemental Process has had harmful consequences for Ohio's conduct of federal elections and for voters. First, thousands of voters were deregistered even though they had not moved and remained eligible to vote. The Secretary concedes that at least 7,515 citizens were struck from the rolls despite not moving; these voters had to cast provisional ballots in the 2016 election. Pet. Br. 14. Yet, the real toll is likely much greater. Records from just *two* of Ohio's 88 counties show that 66,570 registrants were removed from the rolls due to the Supplemental Process. Bell Decl., R. 9-1, ¶¶ 10, 14, PageID 69-70. And there is no way to know how many still-eligible voters who had been deregistered did not cast a provisional ballot because they did not know they were entitled to do so or were improperly

---

[15] Ohio's deficient notice violates a separate provision of the NVRA. As the Sixth Circuit held, Ohio's notices were "blatantly non-complian[t] with the NVRA," Pet. App. 28a, which requires any Section 8(d)(2) notice to have the "effect" of informing the registrant that "[i]f the card is not returned . . . , and if the registrant does not vote in [the next two federal elections,] the registrant's name will be removed from the list of eligible voters." 52 U.S.C. § 20507(d)(2). Deficient notice of intent to purge is among the practices Congress targeted with Section 8. *See Voter Registration: Hearing Before the Subcomm. on Elections of the Comm. on H. Admin.*, 101st Cong. 206-07 (1989) (testimony of Deborah Karpatkin, Legal Dir., Human Serve) (describing cases of New York City voters who had voted in prior elections but were nevertheless purged without warning); *id.* at 149 (statement of Nancy M. Neuman, President, League of Women Voters) (State procedures to purge voters for not voting "strike hardest at those who may not receive notification that their names have been removed.").

denied a provisional ballot by confused poll workers. As the Presidential Commission on Election Administration has observed, "poll workers unaware of various legal requirements, such as those governing provisional ballots, may unintentionally turn away eligible voters." *See* Presidential Comm'n on Election Admin., *The American Voting Experience* 48 (2014). And even if Petitioner's number is correct, depriving 7,515 eligible citizens of their fundamental right to vote based on their lawful choice not to vote in a prior election is exactly what the NVRA was intended to prevent.

Second, Ohio's practice promotes confusion on election day. The Secretary concedes that thousands of people showed up to vote who were not aware they had been deregistered through the Supplemental Process. Pet. Br. 14. Poll workers had to take time to confirm that those people were not on the rolls, to figure out why not, to explain the situation to them, and to offer them a provisional ballot. *See* Pet. App. 94a-100a. Because people who turn out to vote but are not on the rolls require more time and attention from poll workers, they lengthen the lines and wait times for *all* voters. Presidential Comm'n on Election Admin., The American Voting Experience 25 (2014). Longer lines and wait times can lead would-be voters to give up, and discourage others from turning out at all. *See, e.g.*, U.S. Gov't Accountability Off., GAO-14-850, Elections: Observations on Wait Times for Voters on Election Day 2012 26 & n.52 (2014).

This result flies in the face of "the duty of the Federal, State, and local governments to promote the exercise of th[e] right [to vote]" and the NVRA's purpose of "enhanc[ing] the participation of eligible

citizens as voters in elections for Federal office." 52 U.S.C. § 20501(a)(2), (b)(2).

4. Several of Petitioner's amici (but not Petitioner himself) assert that deregistering a voter for failure to vote is somehow justified on the theory that it prevents voter fraud. *See, e.g.*, Judicial Watch Br. 19-20; American Civil Rights Union Br. 13; Landmark Legal Found. Br. 13. No evidence bears out that argument. A broad sweep that starts with all individuals who did not vote (based on the unreasonable inference that people who do not vote must be ineligible to vote) is not a reasonable way to target individuals who may attempt to vote fraudulently. That petitioners' *amici* repeatedly invoke an overstated and theoretical risk does not make it true. And those unsubstantiated concerns certainly do not make Ohio's program reasonable.

B. No Other State Uses Practices as Unreasonable as Ohio's to Deregister Voters.

States have adopted a wide array of practices to remove the names of ineligible voters from the rolls. Petitioner and several of his *amici* suggest that Ohio's Supplemental Process is not unreasonable because it is similar to other states' practices.[16] No other state, however, has a practice as ham-handed and draconian as Ohio's Supplemental Process.

A survey of other state practices reveals that no other state expressly uses the failure to vote in a *single* federal election cycle as the trigger to send a Section 8(d)(2) notice.

---

[16] *See* Pet. Br. 56-57; United States Br. 32-33; Judicial Watch Br. 15-18; American Civil Rights Union Br. 12-13; Landmark Legal Found. Br. 10-12; The Buckeye Inst. Br. 8.

Thirty-eight other states (and the District of Columbia) have established practices that, unlike Ohio's Supplemental Process, use independent information that an individual has moved—not an individual's failure to vote—as a trigger to send a Section 8(d)(2) notice.[17] These states are identified in the Appendix.

Their processes include:

- Consultations with other agencies in the state. State election officials often have information-sharing agreements with other state agencies to identify individuals who may have moved or died. *See, e.g.*, Ind. Code § 3-7-38.2-2 (election officials informed of returned jury notices); N.Y. Elec. Law § 5-712 (election officials receive information from federal, state or local government agencies); Wash. Rev. Code § 29A.08.620 (election officials receive information from Department of Licensing or other agency).
- Information-sharing agreements with other states. Many states (including Ohio) collaborate to pool information from their various agencies to compare voter records across states for evidence that an individual has moved from one jurisdiction to another. *See, e.g.*, Electronic Registration Information Center (ERIC), http://www.ericstates.org/faq (a non-profit organization (consisting of 20

[17] In addition to these thirty-nine jurisdictions, six states either do not have a voter registration requirement (North Dakota) or permit registration at the polls on Election Day (Idaho, Minnesota, New Hampshire, Wisconsin, and Wyoming), and are thus exempt from the NVRA. 52 U.S.C. § 20503(b).

states and the District of Columbia) that aggregates data from its members and submits a report to each state showing "voters who have moved within their state, voters who have moved out of state, voters who have died, duplicate registrations in the same state and individuals who are potentially eligible to vote but are not yet registered"); Del. Code tit. 15, § 1704(a) ("The Department may use a list of persons registered to vote in Delaware and who are registered to vote in another state or who have obtained a Driver's License or state ID card from another state as a source to send an address verification request to those voters."); Va. Code § 24.2-404.4 ("Department of Elections shall request voter registration information . . . from the states bordering the Commonwealth" and "utilize data regarding voter registration . . . received through list comparisons with other states").

- Other election-related mailings. Certain states send mailings to all registered voters or use information about non-delivered or returned mail to identify individuals who may have moved. *See, e.g.*, Ala. Code 1975 § 17-4-30(a) (nonforwardable mailing to all registered voters every four years); Ariz. Rev. Stat. § 16-166(A) (any returned election related mail); Cal. Elec. Code § 2225 (returned voter notification card); Colo. Rev. Stat. § 1-2-605 (1) (returned election-related mail); Ind. Code § 3-7-38.2-2 (returned election-related mail); Kan. Stat. § 25-2316c(e) (returned election-related mail); Neb. Rev. Stat. § 32-329 (biennial mailing of a nonforwardable

notice to each registered voter); N.M. Stat. 1-4-28 (returned election-related mail).

- Canvass of all registered voters. Certain states canvass all of their voters to determine if they have moved. *See* Conn. Gen. Stat. § 9-32; Mass. Gen. Laws Ch. 51, § 37.

- Postal Service Information. Virtually every state, including Ohio, *see* Ohio Rev. Code § 3503.21(B)(1), uses information from the Postal Service's National Change of Address Program to identify individuals who have indicated they have moved. *See, e.g.*, Ariz. Rev. Stat. § 16-166(E); Cal. Elec. Code § 2225; Del. Code tit. 15, § 1704; Ind. Code § 3-7-38.2-2; Kan. Stat. § 25-2316c(e); Mich. Comp. Laws § 168.509aa; Md. Code Elec. Law § 3-502(b); Neb. Rev. Stat. § 32-329; N.J. Stat. § 19:31-15; Va. Code § 24.2-428.[18]

---

[18] The former Department of Justice lawyers supporting Petitioner argue that "[w]hen they were serving in the Civil Rights Division, the Justice Department required states to adopt procedures that are indistinguishable from Ohio's Supplemental Process." *See* Former Att'ys of the Civil Rights Div. Br. 13-14 (emphasis omitted). But the three referenced consent decrees, all of which are over a decade old, do not reflect current State practices. Nor are they indistinguishable from Ohio. For example, the Indiana consent decree did not require Indiana to send Section 8(d)(2) notices to only voters that failed to vote, but instead ordered Indiana first to make "*reasonable efforts* to identify" ineligible voters, "by conducting a statewide mailing . . . via first class non-forwardable mail, to *all registered voters*." Consent Decree and Order, *United States v. Indiana*, No. 1:06-cv-1000 (S.D. Ind., June 27, 2006) (emphasis added).

- Two-step process. Several states use a two-step mailing process for sending a Section 8(d)(2) notice. If an individual has not voted in a specified number of elections, election officials send a non-forwardable notice to that voter; if that notice is returned as undeliverable, only then do these states send a Section 8(d)(2) notice.[19] *See* Alaska Stat. § 15.07.130(a); Fla. Stat. § 98.065(2); 29-250-505 Me. Code R. § 1; Mont. Code § 13-2-220(1); 17 R.I. Gen. Laws § 17-9.1-27(b); S.D. Codified Laws § 12-4-19.

These other state practices demonstrate states can undertake efforts to clean their rolls without adopting a policy like Ohio's Supplemental Process.

Only five other states (Georgia, Oklahoma, Oregon, Pennsylvania, and West Virginia) expressly use failure to vote as a trigger for deregistration at all. All provide for more protection than Ohio to prevent deregistration of eligible voters. Unlike Ohio, none of these states sends a Section 8(d)(2) notice after an individual fails to vote in a *single* federal election cycle. *See* Ga. Code § 21-2-234(a) (three years); Okla.

---

[19] Unlike Ohio, the failure of a voter to respond to the initial mailing in these states does not lead to deregistration, and no 8(d)(2) notice is sent, nor is any further action taken. *Amicus* Judicial Watch incorrectly states that these states use practices similar to Ohio's because they "use the failure to vote . . . as a basis for sending . . . targeted mailings . . . ." Judicial Watch Br. 15-18. On the contrary, unlike Ohio, these states do not require election officials to send a Section 8(d)(2) notice for a single failure to vote. Instead, the deregistration process is initiated only *after* the election official has specific information that the voter has moved: the nonforwardable notice is returned as undeliverable.

Stat. tit. 26, § 4-120.2 (two general elections); Or. Rev. Stat. § 247.296 (five years); 25 Pa. Cons. Stat. § 1901(b)(3) (five years); W.V. Code § 3-2-25(j) (four years).[20] This is especially significant in light of the fact that Ohio is the only state to have sent notices that a court found insufficient to inform voters that if they do not respond to the notice and continue not to vote, they will be deregistered.

The above survey of other state practices reveals what *amici* in support of Petitioner attempt to obscure: that no other state has implemented a process as aggressive or unreasonable as Ohio's Supplemental Process. Ohio's Supplemental Process is the opposite of a "best" practice. American Civil Rights Union Br. 12. Other states have not and will not be "hamstrung" if Ohio's Supplemental Process is confirmed to violate the NVRA. Landmark Legal

---

[20] Although the United States points to these states to suggest that Ohio's Supplemental Process is reasonable, United States Br. 32-33, the United States does not acknowledge that all of these states provide for a longer period of non-voting before notice is sent. Nor does the Department of Justice defend Ohio's "blatantly noncompliant" notice. And it should be noted that the United States took the contrary position in the Sixth Circuit, and has a long track record of telling states that practices similar to Ohio's violate the NVRA. *See* Letter from Isabelle Katz Pinzler, Acting Asst. Att'y Gen. (USDOJ), to Mark Barnett, Att'y Gen. (S.D.) (Feb. 11, 1997), Ex. 2 to Brief of the United States Department of Justice as Amicus Curiae Supporting Plaintiffs-Appellants, *A. Philip Randolph Institute v. Husted*, No. 16-3746 (6th Cir. 2016), ECF 29 ("DOJ Sixth Cir. Amicus Brief"); Letter from Pinzler to Bruce M. Botelho, Att'y Gen. (Alaska) (Feb. 11, 1997), Ex. 3 to DOJ Sixth Cir. Amicus Brief; Joint Stipulation to Substitute Language, Ex. 1 to DOJ Sixth Cir. Amicus Brief (stipulating to order requiring State to use undeliverable mail rather than failure to vote to trigger removal process).

Found. Br. 10. Nor is it "practically infeasible" for Ohio to use a different practice. The Buckeye Inst. Br. 8. Literally every other state uses a different, and more voter-protective, practice.

CONCLUSION

Ohio's Supplemental Process not only violates the NVRA prohibition against removing a lawful voter "by reason of the person's failure to vote," it is based on unreasonable and inaccurate inferences that deprive a significant number of voters of their right to vote, or not vote. This Court should affirm the judgment below.

Respectfully submitted,

WENDY R. WEISER
MYRNA PÉREZ
JONATHAN BRATER
BRENNAN CTR. FOR JUSTICE AT NYU SCHOOL OF LAW
161 Avenue of the Americas, 12th Floor
New York, NY 10013
Phone: 646-292-8318
wendy.weiser@nyu.edu

JOHN A. FREEDMAN
Counsel of Record
PETER J. SCHILDKRAUT
ELISABETH S. THEODORE
JEREMY KARPATKIN
ANDREW W. BEYER
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Ave., NW
Washington, DC 20001
(202) 942-5000
john.freedman@apks.com

Counsel for Amici Curiae

APPENDIX

APPENDIX

Jurisdictions that do not send 8(d)(2) notices solely by reason of failure to vote or are exempt from the NVRA

State	Basis for sending a (d)(2) notice
Alabama Ala. Code 1975 § 17-4-30	State sends a nonforwardable mailer to all registered voters every four years. If mailer is returned as undeliverable, the state sends a (d)(2) notice.
Alaska Alaska Stat. § 15.07.130	State sends a nonforwardable mailer to registered voters who have not voted in last two elections. If mailer is returned as undeliverable, the state sends a (d)(2) notice.
Arizona Ariz. Rev. Stat. § 16-166	State relies on (i) USPS information and (ii) a nonforwardable mailer sent to all registered voters; if mailer is returned as undeliverable, the state sends a (d)(2) notice.
Arkansas Ark. Const. amend. LI, § 10	State relies on (i) USPS information and (ii) "other unconfirmed data indicating that a registered voter no longer resides at his or her registered address."
California Cal. Elec. Code §§ 2220, 2225	State relies on (i) USPS information and (ii) a nonforwardable mailer sent to all registered voters; if mailer is returned as undeliverable, the state sends a (d)(2).

Colorado Colo. Rev. Stat. §§ 1-2-302.5, 1-2-605	State relies on (i) USPS information and (ii) election-related mail that is returned as undeliverable.
Connecticut Conn. Gen. Stat. § 9-32	State relies on annual canvass of all registered voters, which can either be conducted (i) house to house; (ii) by mail using USPS information; (iii) by telephone; or (iv) through a combination of the above methods.
District of Columbia D.C. Code § 1-1001.07	District sends a nonforwardable mailer to registered voters who have not confirmed address through the voting process. If mailer is returned as undeliverable, the state sends a (d)(2) notice.
Delaware Del. Code tit. 15, § 1704	State relies on information identifying voters that have (i) registered to vote in another state or (ii) obtained a driver's license or state idenfication card in another state.

Florida Fla. Stat. § 98.065	State relies on (i) USPS information, (ii) election-related mail returned as undeliverable, (iii) returned jury notices, (iv) information from the department of highway safety and motor vehicles, (v) information "from other sources which indicates that a registered voter's legal residence might have changed," or (vi) a nonforwardable mailer sent to all registered voters who have not voted in the last two years; if mailer is returned as undeliverable, the state sends a (d)(2) notice.
Hawaii Haw. Code R. § 3-172-28	State relies on "information from the courts, the department of health, utility companies, condominium and apartment associations, and other agencies."
Idaho Idaho Code § 34-408(3)	State permits registration at the polls on Election Day, and is thus exempt from the NVRA.
Illinois Ill. Admin. Code tit. 26, § 216.50	State relies on USPS information.

Indiana Ind. Code § 3-7-38.2-2	State explicitly prohibits removal of the name of a person from the official list of voters solely due to the person's failure to vote. State relies on (i) USPS information, (ii) court-returned jury notices, (iii) election-related mail returned as undeliverable, or (iv) information from the bureau of motor vehicles.
Iowa Iowa Code §§ 48A.28, 29	State sends a forwardable mailer either to all registered voters or each registered voter whose name was not reported by the national change of address program and who has not voted in two or more consecutive elections. If mailer is returned as undeliverable, the state sends a (d)(2) notice.
Kansas Kan. Stat. §§ 2316c, 25-2354	State relies on (i) USPS information or (ii) "mass or targeted mailings to registered voters"; if mailer is returned as undeliverable, the state sends a (d)(2) notice.
Kentucky Ky. Rev. Stat. § 116.112	State relies on (i) USPS information or (ii) "other sources to identify voters whose addresses may have changed."
Louisiana La. Stat. § 18:193	State sends (d)(2) notices "[w]hen the registrar has reason to believe that . . . a registrant has changed his residence . . . ."

Maine 29-250-505 Me. Code R. § 1	State relies on (i) USPS information and (ii) a nonforwardable mailer sent to all registered voters or registered voters who did not vote in the most recent election; if mailer is returned as undeliverable, the state sends a (d)(2) notice.
Maryland Md. Code Ann., Elec. Law § 3-502	State relies on (i) "any information that a voter currently registered in the State has moved to a different address within the State," or (ii) USPS information "that a voter has moved to a different address outside the State."
Massachusetts Mass. Gen. Laws ch. 51, §§ 4, 37	State relies on annual canvas of all residents.
Michigan Mich. Comp. Laws § 168.509aa	State relies on (i) USPS information or (ii) "other reliable information received by the clerk that identifies registered voters whose addresses may have changed."
Minnesota Minn. Stat. § 201.061 subd. 3	State permits registration at the polls on Election Day, and is thus exempt from the NVRA.
Mississippi	State does not have any specific statutory provisions for what information is relied on to send a (d)(2) notice.

Missouri Mo. Stat. §§ 115.181, 115.187	State relies on a statewide canvass every two years made house-to-house, through the USPS, or by both methods, and the canvass may be made by including only those voters who did not vote at the last general election.
Montana Mont. Code § 13-2-220	State relies on (i) USPS information, (ii) nonforwardable mailer sent to all registered voters, or (iii) attempts to contact voters who failed to vote in the previous federal general election through either a forwardable or nonfowardable notice or door-to-door canvass. If any mailer is returned as undeliverable or the voter fails to respond, the state sends a (d)(2) notice.
Nebraska Neb. Rev. Stat. § 32-329	State explicitly prohibits removal of a voter for the sole reason that the person has not voted for any length of time. State relies on (i) USPS information or (ii) a nonforwardable mailer sent to all registered voters every other year; if mailer is returned as undeliverable, the state sends a (d)(2) notice.
Nevada Nev. Rev. Stat. § 293.530	State relies on (i) USPS information or (ii) investigations by census, by house-to-house canvass or "by any other method."

New Hampshire N.H. Stat. 654:7-a	State permits registration at the polls on Election Day, and is thus exempt from the NVRA.
New Jersey N.J. Stat. § 19:31-15	State relies on USPS information.
New Mexico N.M. Stat § 1-4-28	State relies on (i) USPS information, (ii) election related mail that is returned as undeliverable, or (iii) periodic mailings to voters to verify continued residency.
New York N.Y. Elec. Law § 5-712	State relies on (i) USPS information, (ii) information from any federal, state or local government agencies, or (iii) election-related mail that is returned undeliverable.
North Carolina N.C. Gen. Stat. § 163-82.14	State relies on (i) USPS information or (ii) "data sharing agreements with other states to cross-check information on voter registration and voting records." The state will send a (d)(2) notice after congressional elections if the voter's address has not been confirmed by other means.
North Dakota	State does not require voter registration, and is thus exempt from the NVRA.

Rhode Island 17 R.I. Gen. Laws § 17-9.1-27	State relies on (i) USPS information or (ii) nonforwardable mailers sent to registered voters who have not voted in the past five years; if mailer is returned as undeliverable, the state sends a (d)(2) notice.
South Carolina	State does not have any specific statutory provisions for what information is relied on to send a (d)(2) notice.
South Dakota S.D. Codified Laws § 12-4-19	State relies on (i) USPS information or (ii) a nonforwardable mailer sent to registered voters who have not voted in last four years; if mailer is returned as undeliverable, the state sends a (d)(2) notice.
Tennessee Tenn. Code § 2-2-106	State relies on (i) USPS information, (ii) election related mail that is returned as undeliverable, or (iii) information from the department of safety.
Texas Tex. Elec. Code § 15.051	State sends a (d)(2) notice "[i]f the registrar has reason to believe that a voter's current residence is different from that indicated on the registration records."
Utah Utah Code § 20A-2-305	State explicitly prohibits removal of a voter because the voter has failed to vote in an election. State relies on "evidence the voter's residence has changed."

Vermont Vt. Stat. tit. 17, § 2150	State relies on an inquiry to determine with certainty the voters eligibility, including using (i) official and unofficial public records and documents, (ii) tax records, (iii) checklists showing voter voted in any election within the last four years, or (iv) attempts to contact voters.
Virginia Va. Code §§ 24.2-404.4, 24.2-428	State relies on (i) USPS information, (ii) voter registration information from bordering states, or (iii) "other reliable sources to identify voters whose addresses may have changed."
Washington Wash. Rev. Code § 29A.08.620	State relies on (i) USPS information, (ii) information from the Department of Licensing, or other agency designated to provide voter registration services, or (iii) election-related mail returned as undeliverable.
Wisconsin Wis. Stat. § 6.55	State permits registration at the polls on Election Day, and is thus exempt from the NVRA.
Wyoming Wyo. Stat. § 22-3-102(a)	State permits registration at the polls on Election Day, and is thus exempt from the NVRA.

Jurisdictions that send 8(d)(2) notices by reason of failure to vote

State	Basis for sending a (d)(2) notice
Georgia Ga. Code § 21-2-234	If voter has not voted in three years (or otherwise contacted election officials), state sends (d)(2) notice. State also relies on election mail returned as undeliverable.
Ohio Ohio Rev. Code § 3503.21	If voter did not vote in last election, state sends a (d)(2) notice. State also relies on USPS information.
Oklahoma Okla. Stat. tit. 26, § 4-120.2	If voter has not voted in two general elections (or otherwise had contact with election officials), state sends a (d)(2) notice. State also relies on (i) election related mail returned as undeliverable, (ii) voter registration information from other states, or (iii) information from the Department of Public Safety.
Oregon Or. Rev. Stat. §§ 247.296, 247.563	If voter has not voted in five years, state sends a (d)(2) notice. State also relies on (i) USPS information or (ii) other "evidence from the elector or another county clerk indicating a change of residence or mailing address."
Pennsylvania 25 Pa. Cons. Stat. § 1901	If voter has not voted in five years (or otherwise had contact with election officials), state sends a (d)(2) notice. State also relies on (i) USPS information and (ii) door-to-door canvass.

West Virginia W. Va. Code § 3-2-25	If voter has not voted in four years (or otherwise had contact with election officials), state sends a (d)(2) notice. State also relies on (i) USPS information, (ii) information from the DMV and other state agencies, or (iii) comparison of voter registration information of all counties.